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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-203757

DATE: December 31, 1981

MATTER OF: Geochemical Testing, Inc.

DIGEST:

1. Small Business Administration's authority is not limited by special standards of responsibility which procuring agency has included in solicitation, since SBA has statutory authority to make final determination with regard to all aspects of responsibility of small business concerns.
2. When Small Business Administration issues certificate of competency to low bidder, on basis that it is able to perform work in question even though it does not meet special standards of responsibility included in solicitation, protest by fifth-low bidder regarding restrictiveness of standards becomes academic.

Geochemical Testing, Inc. protests the inclusion of special standards of responsibility in a solicitation issued by the Pittsburgh Energy Technology Center, Department of Energy (DOE), in which the agency sought a contractor to analyze samples of coal and peat.

In order to insure acceptability of the contractor's facility and staff, DOE states, the invitation for bids, No. DE-FB22-81PC41765.000, as amended, required bidders to have performed a certain number of duplicate analyses--in some cases as many as 1,000 for each of the two preceding years--for 22 different tests. In addition, the project manager was required to be a college graduate who currently was employed in performing or supervising coal analysis work in a laboratory setting and who had a minimum of 10 years of experience. The shift supervisor, a different individual, was required to have a minimum of four years of experience if he or she was a college graduate or 10 years of experience if a high school graduate. Other special standards of responsibility concerned the contractor's quality control procedures and equipment.

Geochemical, the fifth-low bidder, argues that the solicitation is unduly restrictive because the special standards bear no reasonable relation to industry standards. In addition, the protester alleges that the requirements caused inflated bid prices because the successful contractor will have to hire subcontractors who can meet them, and that the solicitation was ambiguous as to whether subcontracting was permitted.

The low bidder for this procurement, Black Rock Test Laboratories, a small business, was found nonresponsible by DOE. The agency referred the matter to the regional office of the Small Business Administration (SBA), as required by the Small Business Act, 15 U.S.C. § 637(b)(7) (Supp. III 1979), and the SBA initially refused to issue a certificate of competency (COC) because Black Rock did not meet the special standards of responsibility. During development of the protest, however, the SBA reopened the question and made a new determination that Black Rock was capable of performing the contract regardless of the special standards. As a result, the SBA issued a COC to Black Rock on December 2, 1981.

The SBA's action has the effect of overriding the special standards. We have stated that SBA's authority is not limited by special standards or definitive criteria of responsibility which a procuring agency includes in a solicitation, since SBA has statutory authority to make final determinations with regard to all aspects of responsibility of small business concerns. Our Office will not question SBA's issuance of a COC unless there is a prima facie showing that its findings were made fraudulently or with such willful disregard of the facts as to imply bad faith. See Baxter & Sons Elevator Company, Inc., 60 Comp. Gen. 97 (1980), 80-2 CPD 414; J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322. If an agency disagrees with SBA's findings, it can request the SBA to reconsider if the record indicates that certain vital information bearing on the responsibility of the bidder was not reviewed. Id. We have been advised informally that DOE is making such an appeal. There is no suggestion of fraud or bad faith, however, and it is clear that SBA already has considered Black Rock's ability to perform the contract with full knowledge of the special standards of responsibility.

In view of SBA's action, Geochemical's protest on the basis of unduly restrictive responsibility criteria is academic. SBA's decision not to enforce the special

standards of responsibility will not justify cancellation and resolicitation with the same standards couched in different terms, Baxter & Sons Elevator Company, Inc., supra, and even if DOE's appeal is successful with regard to Black Rock, the SBA advises us that at least two other small businesses which bid lower than Geochemical would be evaluated for COCs before the question of Geochemical's ability to perform the contract or to meet the special standards of responsibility arose. We therefore do not believe any useful purpose would be served by our considering the matter further. See generally Pepsi-Cola Bottling Company of Salina, Inc., B-203680, September 22, 1981, 81-2 CPD 237, also involving an academic protest.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel